

## Office of the Secretary, HUD

## § 14.200

the agency includes, in addition to the position taken by the agency in the adversary adjudication, the action or failure to act by the agency upon which the adversary adjudication is based. The burden of proof that an award should not be made to an ineligible prevailing applicant because the agency's position was substantially justified is on the agency counsel, who may avoid an award by showing that its position was reasonable in law and fact.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding, if the applicant has falsified the application (including documentation) or net worth exhibit or if special circumstances make the award sought unjust.

### § 14.130 Allowable fees and expenses.

(a) No award for the fee of an attorney or agent under these rules may exceed \$75.00 per hour. However, an award may also include the reasonable expenses of the attorney, agent or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

(b) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the adjudicative officer shall consider the following:

(1) If the attorney, agent or witness is in private practice, his or her customary fee for similar services, or, if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for the kind and quality of services furnished in the community in which the attorney, agent or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in the light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(c) The reasonable cost of any study, analysis, engineering report, test, project, or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the services does not exceed the prevailing rate for similar services, and the study or

other matter was necessary for preparation of the applicant's case.

### § 14.135 Rulemaking on maximum rates for attorney fees.

Any person may file with the Department a petition for rulemaking to increase the maximum rate for attorney fees as provided in 5 U.S.C. 504(b)(1)(A)(ii), in accordance with 24 CFR part 10. The petition should identify the rate the petitioner believes the Department should establish and the types of proceedings in which the rate should be used. It should also explain fully the reasons why the higher rate is warranted. The Department will respond to the petition in accordance with 24 CFR 10.20(b).

### § 14.140 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before the Department and takes a position that is not substantially justified, the award or an appropriate portion of the award shall be made against that agency.

## Subpart B—Information Required From Applicants

### § 14.200 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the Department or other agencies that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed \$2 million (if an individual) or \$7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described